vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3024 OF 2003
IN
SUIT NO.3614 OF 2002

Bharti D. Goragandhi ... Plaintiff

V/s.

Jayesh D. Goragandhi & Ors. ... Defendants

Mr.M.Nair for Plaintiff
Mr.P.M.A. Nair for Defendant No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **MARCH 23, 2006**

P.C.:

. This Motion has been filed for the following reliefs:

(a) that pending the hearing and final disposal of the suit, the defendant No.1 be restrained by an order of injunction restraining him, his servants, agents or anyone claiming through him from collecting share certificates in respect of the properties belonging to D.H. Goragandhi HUF particularly of the properties a list whereof is annexed as Exhibit-A to the plaint including the properties situate in Goragandhi Apartment Co.op. Housing Society Ltd. and/or dealing with the same in any manner;

(b) that the Court Receiver who has taken the formal possession of the properties mentioned at prayer (a) above pursuant to the order dt.20.11.98 passed in Notice of Motion No.1544 of 1997 in Suit No.1227 of 1997, be appointed receiver under this suit and be directed to take custody of the share certificates so intended to be issued by the Society viz. Gorangandhi Apartment Co.op. Housing societies in respect of the said properties;

(c) that the defendant no.1 be ordered to pay a monthly compensation of Rs.50,000/- or any other amount as this Hon’ble Court may deem fit and

proper towards the share of the plaintiff and to enable her to maintain herself;

(d) ...

(e) ...

2. By the order of 6.11.2003, this Court after hearing the parties had directed that in the event the cooperative Society in respect of the property mentioned at Exhibit A to the plaint issues a certificate in the name of Defendant No.1 either in his individual capacity or as Karta of H.U.F. or otherwise, the society should not hand over physical possession of the share certificate to Defendant No.1. The society was directed to hand over the share certificate to the Court Receiver who has been appointed as Receiver in respect of the suit premises.

3. Heard Counsel for the parties. I am of the view that the aforesaid order passed at the ad-interim stage should be confirmed as there is a dispute regarding the ownership of the property which according to the plaintiff, is an HUF property.

4. The plaintiff in paragraph 6 of the affidavit in support of the Motion has stated that the property worth several crores of rupees is in the hands of defendant No.1 solely and he is earning Rs.3 lacs per month from the said properties. She claims that even after adjustment of the outgoings, he earns about Rs.2 lacs

per month. According to the plaintiff, Defendant No.1 who is her son, has been looking after the properties and enjoys the income from those properties without paying any amount to her and her daughters. The plaintiff states that she is running a cloth shop and that the sales have fallen in the last few years and she has in fact incurred losses. Several litigations are pending between the plaintiff and his son both in this Court and various other Courts.

5. Defendant No.1 has filed an affidavit on 6.3.2006 contending that an appeal has been filed against the order passed in a Notice of Motion in an earlier suit between the parties. It is the contention of the Defendant that the prayer sought in that Motion is the same as prayer sought in the present Motion. However, in that Motion this Court directed that a Receiver take charge of properties mentioned in Exhibit A to the plaint except the properties which had been exclusively bequeathed to Defendant No.1 under the will. Therefore, that was a case where the Plaintiff was seeking the appointment of Court Receiver in respect of the properties which were the self acquired properties of the deceased. In the present Suit the plaintiff is seeking an amount of Rs.50,000/- as compensation per month in respect of the HUF properties which now are in charge of Defendant No.1. There is no denial in the affidavit in reply that Defendant No.1 is in fact earning the amounts stated in paragraph 6. The

properties mentioned in Exhibit A include several shops and residential apartments.

6. It is the case of the plaintiff that she is unable to maintain herself with the income from the shop which she is running at the present moment. Therefore, she seeks some maintenance from defendant No.1. In my view, the prayer for maintainance is justified. The plaintiff is the mother of Defendant No.1. The fact that the defendant is earning from the premises in his possession is not denied in the affidavit in reply to the Motion. However the claim for Rs.50,000/- is too high, considering that the plaintiff is earning some amount from the shop she runs. Defendant No.1 shall pay monthly compensation of Rs.20,000/- to the Plaintiff on and from 1.4.2006.

7. Ad-interim relief granted earlier confirmed. Defendant No.1 to pay the plaintiff compensation of Rs.20,000/- each month on and from 1.4.2006.

8. Notice of Motion disposed of accordingly.